

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

)	Complaint No. 98-025
)	
In the Matter of:)	
)	
)	ADMINISTRATIVE CIVIL LIABILITY FOR
)	VIOLATIONS OF THE CALIFORNIA WATER CODE
CITY OF POMONA, CALIFORNIA)	AND WASTE DISCHARGE REQUIREMENTS
)	FOR MUNICIPAL STORM WATER AND
)	URBAN RUNOFF DISCHARGES
)	WITHIN THE COUNTY OF LOS ANGELES
)	(ORDER NO. 96-054 NPDES NO. CAS614001)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Pomona is alleged to have violated requirements of the Municipal Storm Water and Urban Runoff Discharge Permit for Los Angeles County, contained in Order No. 96-054, for which the California Regional Water Quality Control Board, Los Angeles Region (hereinafter Regional Board) may impose civil liability under section 13385 of the California Water Code (CWC).
2. Unless waived, a hearing on this matter will be held before the Regional Board at a regularly-scheduled public meeting that will start at 9:00 a.m. on May 18, 1998 at the Alhambra City Hall, Council Chambers, 111 North 1st Street, Alhambra, California. You and/or your representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability, or any other action appropriate as a result of the hearing.

ALLEGATIONS

3. Since October 16, 1997, the City of Pomona has violated Order No. 96-054 by failing to submit an Annual Program Report and a Storm Water Budget Summary. The following facts are the basis for the alleged violations:
 - a. The City of Pomona is a Permittee regulated under requirements specified in Board Order No. 96-054 (NPDES No. CAS614001) adopted July 15, 1996.
 - b. Board Order No. 96-054 (NPDES No. CAS614001) requires that each Municipality (listed on page 11 of the Order and includes the City of Pomona) implement storm water management controls to reduce the discharge of pollutants to the storm drain system to the maximum extent practicable.

- c. Board Order No. 96-054 requires that an Annual Program Report be submitted to the Regional Board by October 15 of each year beginning in 1997 for the 1996-1997 fiscal year.
- d. The County of Los Angeles provided the City of Pomona a template for the City of Pomona's use in completing the 1996-1997 Annual Report on or before October 15, 1997.
- e. The City of Pomona failed to submit their Annual Report on October 15, 1997 as required under section 2.VII.2 of the Order.
- f. On or about February 5, 1998, Regional Board staff transmitted via facsimile machine a sample Annual Report format to City of Pomona staff for use as a template.
- g. On February 24, 1998, City of Pomona staff phoned Regional Board staff and advised that the Annual Report would be submitted to the Regional within "the next few days".
- h. On March 9, 1998, Regional Board staff sent a Notice of Noncompliance to Mr. Glenn K. Lewis, Director of Public Works, City of Pomona for failing to submit the Annual Report for fiscal year 1996-1997.
- i. The March 9, 1998, Notice of Noncompliance provided a final submittal date of March 31, 1998 for the delinquent report. Further, the Notice of Noncompliance also provided a warning that failure to submit the report by March 31, 1998, may result in enforcement action by the Regional Board.
- j. As of April 2, 1998, the Annual Report has not been submitted to the Regional Board as required.

PROPOSED CIVIL LIABILITY

- 5. The maximum civil liability that could be imposed under section 13385(c)(1) of the CWC is \$1,690,000, as discussed below.
- 6. Section 13385(c)(1) of the CWC authorizes a maximum civil liability of \$10,000 per day. By failing to comply with the Annual Report submittal date in Order No. 96-054, section 2.VII.2, from October 16, 1997 to April 2, 1998, the City of Pomona is alleged to have violated Board Order 96-054 for 169 days. Therefore, under section 13385(c)(1) of the CWC, the maximum civil liability that could be imposed for this violation is \$1,690,000. Pursuant to section 13385(e) of the CWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violations; with respect to the violator, the ability

to pay; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.

- a. Nature, circumstances, extent, and gravity of the violations: The City of Pomona was in violation of Order No. 96-054 for 169 days. The Annual Report is an integral part of the storm water program and is necessary to demonstrate compliance with Order No. 96-054.
 - b. The ability of the discharger to pay: The City of Pomona has a population in excess of 100,000. The City of Pomona collects property taxes on private properties owned within the City of Pomona. The City of Pomona has the means to meet civil liability imposed for violation of Order No. 96-054. However, there are substantial costs associated with the implementation of requirements of Board Order 96-054. Therefore, a reduction from the maximum civil liability is warranted.
 - c. Prior history of violations: Regional Board staff is not aware of other significant violations of Order No. 96-054. Therefore, a reduction from the maximum civil liability is warranted.
 - d. Degree of culpability: The City of Pomona did not take adequate corrective action to resolve the violation of Order No. 96-054, despite written and verbal communications from Regional Board staff. However, City of Pomona staff communicated to Regional Board staff that their staffing was reduced which had a significant effect on their ability to comply with this requirement. Therefore, a reduction from the maximum civil liability is warranted.
 - e. Economic benefit or savings: The City of Pomona realized an economic benefit by not submitting the Annual Report. If the City of Pomona did not implement practices to control storm water pollution, then a significant economic benefit was gained. Therefore, no reduction from the maximum civil liability is warranted.
 - f. Other matters as justice may require: Other matters to consider include time spent by the staff of the Regional Board in evaluating the violations and preparing this Order and related documents. The Regional Board charges a rate of \$70 per hour for recovery of staff costs. With staff time of 10 hours, staff costs incurred by the Regional Board total \$700.
7. After consideration of the factors listed in Section 13327 and Section 13385(e) of the CWC, the Regional Board Executive Officer recommends that civil liability be imposed by the Regional Board in the amount of \$6,700. This includes \$6,000 as an assessment for the violations [\$1,000 per month multiplied by 6 months] and staff costs of \$700.
 8. In the event that the City of Pomona chooses to waive their right to a hearing, an authorized agent must sign the waiver attached to this Complaint, and return it to the

Regional Board by April 20, 1998. The signed waiver must be accompanied by payment of the civil liability of \$6,700.

9. Should the City of Pomona not waive their right to a hearing, a hearing will be held during the regularly-scheduled public meeting of the Regional Board on May 18, 1998. In the event that the Board affirms this Complaint, payment of the total civil liability will be due on June 18, 1998.
10. In the event that the City fails to make payment as specified above, the Executive Officer is authorized to refer this matter to the State of California Attorney General for enforcement.
11. This Complaint is issued to enforce a permit duly adopted by this Regional Board and is, therefore, exempt from the requirements of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.), pursuant to Title 14, CCR, Section 15321.

DENNIS A. DICKERSON
Executive Officer

Dated: April 2, 1998

/cmu

WAIVER OF THE RIGHT TO A HEARING

By signing below and attaching a check for the amount of civil liability proposed in Administrative Civil Liability Complaint No. 98-025, the City of Pomona, on behalf of itself, waives the right to a hearing before the Regional Board. The City of Pomona understands that it is giving up its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, civil liability imposed.

Signature: _____

Name: _____

Position: _____

City of Pomona

Date: _____